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MEMORANDUM

NOVEMBER 18, 1976

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT T. KENNEY, DIRECTOR

SUBJECT: AMENDMENT TO 121A APPLICATION OF
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

On June 27, 1974, the Authority approved an Amendment to the 121A Application of the Prudential Insurance Company of America, which amendment allowed for the construction of a Bicentennial Pavilion at the Prudential Center in Boston.

The Pavilion, a single story temporary structure having a steel frame and fire resistant vinyl covering, has a floor area of approximately 10,000 square feet comprised of a theatre and an exhibit area. At the time of the Authority's approval in 1974, Prudential had requested that the Pavilion operations be allowed to continue until December 31, 1976. However, the show "Where's Boston", which has been playing at the Pavilion since June of 1975, has received such wide spread acclaim that Prudential has requested permission through its Supplementary Application dated September 1, 1976, to continue operations of the Pavilion until December 31, 1979.

Prudential has also requested that the Amendments to its original 121A Application which were approved on June 27, 1974, again be approved by the Authority to assure that these amendments will also be effective until December 31, 1979. The amendments in question deal for the most part with changes to the Statement of Minimum Standards (Exhibit C of the Prudential 121A Application). The plans for the continuation of the Project have also been submitted to the City of Boston's Building and Fire Departments.

It is therefore recommended that the Authority approve the Prudential Insurance Company of America's September 1, 1976 Supplementary Application.

An appropriate Vote is attached.

Attachment

Prudential

September 1, 1976

Boston Redevelopment Authority
Boston City Hall
One City Hall Square
Boston, Massachusetts 02108.

Re: Supplementary Application:
Prudential Center Project
Bicentennial Pavilion

Gentlemen:

Reference is made to (a) Amendment of Application dated June 13, 1961, filed by The Prudential Insurance Company of America with you on July 14, 1961, and to your Report and Decision dated August 14, 1961; (b) Supplementary Application dated August 13, 1964, filed by the insurance company with you on the same day and to the action which you took with reference thereto by vote on August 13, 1964, approved by the Mayor on August 19, 1964; (c) Supplementary Application dated April 26, 1965, filed with you on April 29, 1965, and to the action which you took with reference thereto by vote on April 29, 1965, approved by the Mayor on June 2, 1965; and (d) Supplementary Application dated July 17, 1967, filed with you on July 27, 1967, and to the action which you took with reference thereto by vote on August 7, 1967, and approved by the Mayor on August 15, 1967; and (e) Supplementary Application dated April 11, 1972, filed with you on April 11, 1972, and to the action which you took with reference thereto by vote dated June 15, 1972, and approved by the Mayor on July 6, 1972; (f) to Supplementary Application dated April 17, 1973, filed with you on the same day, and to the action which you took with reference thereto on April 22, 1973, approved by the Mayor on May 2, 1973; and (g) Supplementary Application dated June 13, 1974, filed with you on the same day, and not yet acted upon, and, (h) Supplementary Application dated April 15, 1976, filed with you on the same day, and to the action you took with reference thereto on May 6, 1976 and approved by the Mayor on May 24, 1976.



1. In accordance with the foregoing votes, the insurance company has completed the buildings and improvements contemplated by the above applications and as shown on the site plan attached hereto.
2. The Supplementary Application dated June 27, 1974, entitled "Bicentennial Pavilion" and approved by you on July 17, 1974 permitted the insurance company to construct a single story temporary tent structure having a steel frame and supports and on exterior covering consisting primarily of an approved vinyl, fire resistant fabric which produces a consistent roof profile by the use of internal air pressure.
3. The Supplementary Application stated that if the Bicentennial Pavilion project proceeded satisfactorily, it would continue in operation until December 31, 1976 and at the termination of operation, the Pavilion would be dismantled and the site restored to its former condition.
4. Paragraph 3 of the insurance company's Supplementary Application dated June 27, 1974 set forth a date of December 31, 1976 as the termination date for the operation.
5. From the opening date of June 21, 1975 through December 31, 1975, 209,000 visitors attended the show "WHERE'S BOSTON", and from January 1, 1976 through July 31, 1976 another 310,000 visitors have attended the Show. The insurance company projects total attendance for 1976 of 500,000, and projects a potential audience of 250,000 to 500,000 annually for the years 1977-1979. The Show has received wide critical acclaim from individuals in the city, the state and the nation. An increasingly upward attendance trend reflects broad popular approval. The insurance company is of the opinion that the Pavilion and Show have reflected very favorably on the City of Boston and Prudential Center, and that continuation of the Pavilion and Show for a period up to three years from the stated termination date will continue to reflect favorably on the City of Boston and Prudential Center. The insurance company is therefore of the opinion that it is in the best interests of itself and the City of Boston to continue the Pavilion and Show for a period up to three years from the stated termination date.
6. It is requisite to the continued operation of the Pavilion in accordance with the foregoing that the Authority, with the approval of the Mayor, again declare that the temporary structure is not a fundamental change in the type and character of the buildings in the Project, and will be subject to the provisions of General Laws, Chapter 121A and Chapter 652 of the Acts of 1960 now applicable to the Project, and of the Contract with the City of Boston dated March 2, 1962, and the Rules, Regulations and Minimum Standards of Amounts to be paid to the City of Boston applicable to the Project as said Contract, Rules, Regulations and Minimum Standards, and State-ments of Amounts are to be amended pursuant to this Supplementary Application.

7. The insurance company believes that the Pavilion complies with the applicable use, floor area ratio, vehicle parking, and dimensional requirements under the Boston Zoning Code and requests that the Authority with the approval of the Mayor declare that it so complies.
8. The insurance company believes that the Pavilion is classified under the Boston Building Code as a tent conforming to the requirements of "Occupancy Group F-5" in Section 208.5. The Boston Fire Department has declared acceptable certain interior stairways (in the projection booth) 36 inches in width instead of 44 inches in width for the reasons that the stairways are not intended for public use and that two means of egress are thus provided from the projection area. The insurance company requests that the Authority with the approval of the Mayor authorize the issuance by the City of all building and use permits necessary for the future operation of the Pavilion until December 31, 1979, pursuant to the plans and specifications submitted to the Boston Building Department and Boston Fire Department.
9. Attached to said Amendment of Application dated June 13, 1961, as Exhibit C, was a Statement of Minimum Standards to which the insurance company agreed to conform in the financing, construction, maintenance and management of the Project. By Paragraph H of its said Report and Decision dated August 14, 1961, the Authority adopted said Minimum Standards and imposed the same as rules and regulations applicable to the Project. Paragraph C of said Minimum Standards provides in part as follows:

"Upon completion of the construction and until the expiration of forty years after the date of the approval of the Project, the Applicant shall, except in the case of damage by casualty (excluding fire and other risks to the extent that such other risks are covered by insurance), at its cost and expense keep

and maintain, or cause to be kept and maintained, in not less than a reasonable state of repair, order and condition, the Project, including the exterior and interior of all buildings, structures and improvements thereon, all fixtures and equipment used in connection therewith so far as within the control of the Applicant and not owned by tenants, and the plaza, roads, walks, approaches and landscaping within the Project Area."

The insurance company agreed to conform with the foregoing as part of its contract dated March 2, 1962, with the City of Boston. Because of the temporary nature of the Pavilion and its use, it might not be feasible economically or otherwise to repair or restore the Pavilion in the event that it was substantially damaged by fire or other casualty. The insurance company requests the Authority with the approval of the Mayor on behalf of the City to agree and declare that the Minimum Standards for Financing, Construction, Maintenance, and Management of the Project be amended so as to provide that in the event the Pavilion is substantially damaged by fire or other casualty (whether or not the risk is covered by insurance), the insurance company shall have the right, but not the obligation, to repair and restore the Pavilion in accordance with the Minimum Standards otherwise applicable; and in the event the insurance company elects not so to repair and restore, the Pavilion shall be promptly dismantled and the site restored to its former condition.

10. It is requisite to the continued operation of the Pavilion in accordance herewith that the Statement of Minimum Standards to which the insurance company agreed to be bound which was annexed as Exhibit C to said Amendment of Application dated June 13, 1961 so adopted as rules and regulations by the Authority with the approval of the Mayor and which was part of the contract dated March 2, 1962, with the City of Boston, be amended with respect to subparagraph 2 entitled "Definitions for the Purposes of Making Computations Required by the Provisions of Chapter 121A" of Paragraph D, Accounting Procedures, in the following particulars:

- (a) by inserting at the end of clause (a) as appearing on page c-5 thereof the following sentence:

"Notwithstanding the foregoing, any amount derived from the sale or other disposition of the Pavilion or of any property, tangible or intangible, used in connection therewith shall be excluded from 'Gross Income' and 'Gross Receipts' for the purpose hereof."

- (b) by inserting at the end of clause (b) as appearing on page c-7 thereof the following:

"Notwithstanding the foregoing: (i) such expenses of maintenance, operation and management of the Project shall also include with respect to the Pavilion, advertising and other promotional expenses related to the Pavilion and any fees or other compensation paid or incurred in connection with the conduct of shows, performances, concessions, exhibit areas, visitor information services, or other activities of the Pavilion and all expenses of Pavilion removal and site restoration.

11. It is requisite to the continued operation of the Pavilion in accordance herewith that Exhibit D entitled "Statement of Amounts to be paid to the City of Boston in addition to the excise prescribed by Section 10 of Chapter 121A" to said Amendment of Application dated June 13, 1961 so adopted as rules and regulations be amended by inserting the words "and the Pavilion" in the parenthetical phrase contained in the first clause of subparagraph 2 as appearing on page D-6 thereof so that said subparagraph will read in relevant part as follows:

"2. the net income (before income taxes) derived by the Applicant from any recreational, service, or other facility (including any garage or parking space and the Pavilion) operated by the..."

The insurance company also requests the Authority with the approval of the Mayor on behalf of the City to agree and declare that the determination of "net income" for purposes of said subparagraph 2 of Exhibit D shall be governed by the definition of "Net Income" contained in clause (b) of subparagraph 2 of the Minimum Standards annexed as Exhibit C

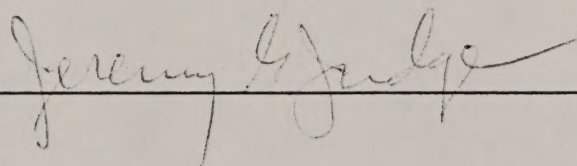
to said Amendment of Application dated June 13, 1961, as said Minimum Standards are to be amended pursuant to this Supplementary Application, except that for purposes of said subparagraph 2 of Exhibit D any payment to the City required by said Exhibit D itself shall not be taken into account as a deduction.

12. A contract dated March 2, 1962 was executed and delivered by and between the City of Boston and the insurance company in the form of a proposed contract annexed to said Amendment of Application dated June 13, 1961. It is requisite to the continued operation of the Pavilion in accordance with the foregoing that said contract be further amended to bring the same into consonance with the declarations and approvals if the same are given and made by the Authority and the Mayor, in accordance with this Supplementary Application. The insurance company submits herewith five copies of a proposed amendment of such contract.

Executed this 1st day of September, 1976, in the name and on behalf of The Prudential Insurance Company of America by its Vice President thereunto duly authorized.

THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA

BY

A handwritten signature in cursive script, appearing to read "Jeremy G. Gudge", is written over a horizontal line.

CONTRACT AMENDMENT

This AMENDMENT made this day of 1976, to the contract dated March 2, 1962, by and between THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a mutual life insurance company organized and existing under and by virtue of the laws of the State of New Jersey and authorized to conduct business within the Commonwealth of Massachusetts (hereinafter called the Company), and CITY OF BOSTON, a municipal corporation of the Commonwealth of Massachusetts (hereinafter called the City), acting herein by virtue of the provisions of Sections 6A and 14 of Chapter 121A of General Laws and every other power and authority it hereto enabling.

WHEREAS the Company, pursuant to the provisions of Chapter 121A of the General Laws and Chapter 652 of the Acts of 1960, filed with Boston Redevelopment Authority (hereinafter called the Authority) an Amendment of Application dated June 13, 1961 (hereinafter called the Application), for approval of the Prudential Center redevelopment project and has since filed with the Authority sundry Supplementary Applications, including a Supplementary Application dated 1976 (hereinafter called the Pavilion Application), concerning the operation on the project of a temporary pavilion structure; and

WHEREAS the Authority and the Mayor have now approved the Pavilion Application, other than the proposed contract amendment set forth in subparagraph (a) of paragraph 11 of the Application;

NOW, THEREFORE, the Company and the City hereby mutually agree that the contract dated March 2, 1962, between them be and it is hereby amended as follows:

1. By inserting at the end of clause (b) as appearing on page c-7 thereof the following:

"Notwithstanding the foregoing, (c) such expenses of maintenance, operation and management of the Project shall also include with respect to the Pavilion, advertising and other promotional and pre-opening expenses related to the Pavilion and any fees or other compensation paid or incurred in connection with the conduct of shows, performances, concessions, exhibit areas, visitor information services, or other activities of the Pavilion and all expenses of Pavilion removal and site restoration."

2. That Exhibit D entitled "Statement of Amounts to be paid to the City of Boston in addition to the excise prescribed by Section 10 of Chapter 121A" to said Amendment of Application dated June 13, 1961 so adopted as rules and regulations be amended by inserting the words "and the Pavilion" in the parenthetical phrase contained in the first clause of subparagraph 2 as appearing on page D-6 thereof so that said subparagraph will read in relevant part as follows:

"2. The net income (before income taxes) derived by the Applicant from any recreational, service, or other facility (including any garage or parking space and the Pavilion) operated by the..."; and

3. That the determination of "net income" for purposes of said subparagraph 2 of Exhibit D shall be governed by the definition of "Net Income" contained in clause (b) of subparagraph 2 of the Minimum Standards annexed as Exhibit C to said Amendment of Application dated June 13, 1961, as said Minimum Standards are being amended hereby, except that for purposes of said subparagraph 2 of Exhibit D any payment to the City required by said Exhibit D itself shall not be taken into account as a deduction.

EXECUTED in duplicate as a sealed instrument the day and year first above written.

THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA

BY

Jeremy B. Judge

CITY OF BOSTON

Approved as to form:

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